

STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR
FOR LIMITED CONSTRUCTION WORK – DEQ Contract No. 410018



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This CONTRACT is entered into by and between the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ"), and the CONTRACTOR ("Contractor").

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor agrees to perform the following work procured by informal solicitation and described as follows:

1. Work will be located on Bureau of Land Management (BLM) property, behind the Masonic Hall, within the town of Marysville, Montana in Lewis and Clark County (Project Location) as shown on **Figure 1**. Work will include: mobilization of excavator or backhoe and support equipment to the Project Location; completing a utility locate prior to work activities; locating an approved borrow source; remove the fence surrounding the collapse feature; removal of wood and other materials from the collapse feature and stockpile to the side of the work area; fill the collapse feature with borrow material and compact; place the previously moved materials on top of the compacted fill; replace fence; conduct site cleanup of disturbed areas and demobilization.

The United States Bureau of Land Management (BLM) will fund this reclamation project through the American Recovery and Reinvestment Act of 2009 (ARRA).

2. "Project Coordinator", (the onsite DEQ individual or DEQ's appointed representative), will oversee all work activities.
3. The Project Location is depicted on **Figure 1**. The Bid Form is **Attachment 1**.
4. Work includes five (5) separate lump sum bid items, of which, are set forth on the Bid Form and described as follows:
 - a. **Bid Item 1: Mobilization/Demobilization** This bid item includes all actions necessary for the transportation and movement of personnel, equipment, supplies and incidentals to the Project Location prior to beginning work and transportation and movement of these items away from the Project Location upon completion of work and insurance. Access to the work site is across private land and DEQ has a signed access agreement in place with this private property owner. This bid item includes delivery and placement of a sufficient quantity of gravel to protect the access to the work site through the adjoining property. This bid item includes a utility locate prior to commencing work activities.
 - b. **Bid Item 2: Remove and Replace Fence** This bid item includes removal of the existing fence that surrounds the collapse feature to access the collapse feature. After completion of backfilling the collapse feature, the fence will be replaced. Fence posts and fencing material damaged during the removal of the fence will be replaced by the Contractor with equivalent materials.
 - c. **Bid Item 3: Handle Materials at Collapse Feature** This bid item includes removal of the wood and other materials that exist in the bottom of the collapse feature. The materials will be removed in a manner that preserves their historical integrity to the maximum extent possible. The materials will be staged away from the work area and then placed on top of the filled in collapse feature after backfilling of the feature has been completed.
 - d. **Bid Item 4: Fill Collapse Feature** This bid item includes placing twelve (12) inch lifts of borrow material into the collapse feature after the fence and wood and other material have been removed from the opening. The borrow material shall be taken from a local borrow source identified by the Contractor. Onsite material is not considered local borrow. It is estimated that 300 cubic yards of borrow will be needed to fill the collapse feature. Borrow material **shall NOT** be taken from the work site. The borrow material shall be compacted with the excavator or back hoe bucket before another lift is placed. The process shall be repeated until the fill material is compacted and is at an elevation twelve (12) inches **BELOW** the existing ground surface.
 - e. **Bid Item 5: Regrade/Revegetate Disturbed Areas** This bid item includes restoring the work site to the pre-existing condition of the Project Location before the work activities commenced. Restoration includes, but is not limited to, filling

in tire or track impressions with topsoil, leveling the surface and seeding disturbed areas. Certified weed free seed is required for revegetating disturbed areas.

ARTICLE 2. TIME OF COMPLETION. The effective date of this Contract shall be the latter of the two dates of signature as set forth in Article 14. **ALL work will be completed no later than June 18, 2010**, unless this Contract is extended by written amendment as set forth in Article 10.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor:

1. For Work, as set forth in Article 1, the costs set forth on the Bid Form:
 - a. The lump sum bid for Bid Item 1: Mobilization/Demobilization
 - b. The lump sum bid for Bid Item 2: Remove and Replace Fence
 - c. The lump sum bid for Bid Item 3: Handle Materials at Collapse Feature
 - d. The lump sum bid for Bid Item 4: Fill Collapse Feature
 - e. The lump sum bid for Bid Item 5: Regrade/Revegetate Disturbed Areas
2. All pay item measurements will be made by Project Coordinator.
3. All costs in connection with Work, including, but not limited to, the furnishing of materials, loading, hauling and placement of materials, equipment, tools, supplies, and providing all necessary labor and supervision to fully complete Work, shall be included in the lump sum bid items. No item that is required for the proper and successful completion of Work will be paid for outside or in addition to the lump sum bids.

ARTICLE 4. FINAL PAYMENT. Final payment to be made based on the costs as set forth in Article 3. Final payment shall be made by DEQ to Contractor under DEQ purchase order in accordance with the time periods specified by state law, when: 1) the work has been completed to DEQ's satisfaction and 2) the Contract is fully performed.

ARTICLE 5. MEETINGS. Contractor is required to meet with Project Coordinator, to resolve technical or contractual problems that may occur during the term of this Contract or to discuss the progress made by Contractor and DEQ in the performance of their respective obligations, at no additional cost to DEQ. Meetings will occur as requested by DEQ and will be coordinated by DEQ.

ARTICLE 6. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING. Contractor shall not assign, transfer or subcontract any portion of this Contract without the express written consent of DEQ. Contractor shall be responsible to DEQ for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationship exists between any subcontractors and DEQ.

ARTICLE 8. HEALTH AND SAFETY. Contractor shall submit a site specific Health and Safety Plan. The plan shall be written in accordance with the following U. S. Department of Labor, Occupational Safety and Health Administration standard practices: Safety and Health Standards 29 Code of Federal Regulations (CFR) 1926 (General Industry), and 29 CFR 1926 (Construction Industry) and the Montana Safety Act, including Sections 50-71-201, 202 and 203 of the Montana Code Annotated.

The Contractor shall take all reasonable precautions to prevent pollution of air, soil and water associated with the contract activities. The Contractor shall remove from contract area, all refuse resulting from use, servicing, repair or abandonment of equipment. The Contractor shall comply with the Toxic Substances Control Act of 1976, as amended (15U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by, or stored in the project area and any road or landing authorized for use in this contract (see 40CFR. Part 702-799). Any release of toxic substances in excess of the reportable quantity, established by 40CFR, Part 117, shall be reported to as required by the Comprehensive Environmental Response

Compensation and Liability Act of 1980, Section 102b and to the Project Coordinator. A copy or any report required or requested by any Federal agency or State government resulting from a reportable release or spill of toxic substances shall be furnished to the Project Coordinator concurrent with the filing of the reports to the Federal agency or State government. In the event of a release of toxic substances in excess of the reportable quantity, the DEQ will coordinate the cleanup effort and the Contractor is responsible for all cleanup related costs.

ARTICLE 9. BONDS / RETAINAGE. No bonds will be required under this Contract. However, pursuant to Section 18-2-404 (2), MCA, at least \$1,000 under this Contract will be withheld until the completion of the Work. These monies are to be withheld to ensure Contractor's faithful performance of the terms of this Contract. Faithful performance shall include, without limitation, timely delivery of work products or services, compliance with record keeping requirements, timely progress toward specified deadlines, and provision of all required work products and services in a satisfactory manner.

DEQ may decline to pay amounts so retained if, in DEQ's determination, Contractor fails to faithfully perform the Work. Prior to declining to pay retainage, DEQ shall provide Contractor with ten (10) working days written notice informing Contractor of DEQ's intent not to pay and documenting the basis for DEQ's determination of Contractor's nonperformance. DEQ and Contractor agree to use their best efforts to resolve any disputes concerning payment of monies retained. The amount of the retainage shall not constitute a measure of damages or a limit on damages to which DEQ is entitled for failure of performance or other breach by Contractor.

ARTICLE 10. MODIFICATIONS This Contract may not be enlarged, modified, or altered except by a written modification signed by DEQ and Contractor and attached to the original of this Contract. No handwritten change, addition or erasure of any printed portion of this Contract or on any task order issued pursuant to this Contract shall be valid or binding upon either party.

ARTICLE 11. TERMINATION. This Contract may be terminated by either party in the event of default or by DEQ for its convenience as set forth below:

1. This Contract (or any task order or work order issued under this Contract) may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for default, the parties shall have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that in the event either of them incurs any legal costs or attorney's fees whatsoever, each party shall pay its own legal costs and attorney's fees.
2. This Contract may be terminated in whole or in part in writing, by the DEQ for its convenience, provided that the Contractor is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with DEQ prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for DEQ's convenience, Contractor shall be entitled to payment in accordance with this Contract (or any task order) for services rendered and expenses incurred by Contractor during the period prior to the effective date of termination.

ARTICLE 12. MISCELLANEOUS.

1. Taxes/Permits/Fees. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.
2. Labor/Materials Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.
3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance at the limits and types required by DEQ for this Contract, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, representatives, assigns, or subcontractors.

- a. **Hold Harmless and Indemnification:** Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of Contractor, its agents, employees, assigns, and/or subcontractors under this Contract.
 - b. **Contractor's Insurance:** Insurance required under all sections herein shall be in effect for the duration of the contract. Insurance required herein shall be provided by insurance policies issued only by companies currently authorized to do business in the state of Montana. No Contractor or Subcontractor shall commence work under this Contract until all required insurance has been obtained and proof of insurance, in the form of certificates of insurance satisfactory to DEQ, have been delivered to DEQ.
 - c. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by its employees, the employees of any Subcontractor, and claims made by anyone directly or indirectly employed by Contractor or Subcontractor. Contractor shall require each Subcontractor to provide Workers' Compensation Insurance.
 - d. Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability: \$100,000 per occurrence; aggregate limit of \$300,000.
 - i. The Commercial General Liability Insurance shall provide coverage for bodily injury (including accidental death), and property damage which may arise out of the work under this Contract, or operations incidental thereto, whether such work and operations be by Contractor or by Subcontractor or by anyone directly or indirectly employed by Contractor or Subcontractor, or by anyone for whose acts any of them may be liable.
 - ii. Contractor's insurance policies shall list DEQ as an additional insured. Should Contractor not be able to list DEQ as an additional insured, Contractor shall purchase a per occurrence Owner's / Contractor's Protective Policy (OCP) with DEQ as the insured party in the same occurrence and aggregate limited as indicated above for the Contractor's Commercial General Liability Policy.
 - iii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising or demolition of any building or structure or structural support thereof.
 - iv. Contractor's insurance coverage shall be PRIMARY insurance as respects DEQ, its officers, elected and appointed officials, employees and volunteers. Any insurance or self insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not be attributable to it.
 - e. The insurance required under this Contract shall not be cancelled or materially changed unless Contractor provides at least thirty (30) days prior written notice to DEQ.
4. **Construction Contractor Registration.** Contractor represents that it has registered with the Department of Labor & Industry under 39-9-201 and 39-9-204, MCA, PRIOR to this Contract being executed by the State of Montana, and has provided a copy of the registration certificate to DEQ.
 5. **Gross Receipts Tax.** In compliance with 15-50-206, MCA, Contractor will have 1% of his gross receipts withheld by DEQ from all payments due for Contracts over \$5,000. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by Contractor. Contractor shall notify the Department of Revenue on the department's prescribed forms.
 6. **Equal Employment Opportunity.** All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
 7. **Record Keeping.** Payrolls and basic records pertaining to the project shall be kept by Contractor according to generally accepted accounting principles and shall be available to DEQ, Legislative Auditor, the Legislative Fiscal Analyst or his

authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of the project by DEQ.

8. **Montana Prevailing Wage Rate Requirements.** Contractor must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA. The rates applicable to this project will generally be the rates specified for heavy and highway construction. Contractor agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry. (Phone 406-444-5600 / email <http://rad.dli.state.mt.us>).

If Contractor employs any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the Montana Department of Labor and Industry. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify DEQ of its intention to employ persons in trades or occupations not classified in sufficient time to obtain approved rates for such trades or occupations.

Under 18-2-406, MCA, Contractor must post in a prominent and accessible location at the site, not later than the first day of Work, a legible statement of all wages to be paid to employees employed at the site. Under 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.

Under 18-2-422, MCA, Contractor must maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for a period of not less than three years after the Contractor's completion of Work on the project.

9. **Compliance with Laws.** The Contractor must, in performance of Work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontractor shall comply with this provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

ARTICLE 14. BEST MANAGEMENT PRACTICES

Contractor shall prevent pollution of waters of the State that may be caused by this reclamation project. Contractor shall implement best management practices (BMPs) during all phases of the project as approved by DEQ. Contractor shall construct and maintain erosion control devices. If during construction DEQ deems it necessary to install additional erosion control devices, these devices shall be installed by Contractor. Contractor shall maintain BMPs during all precipitation events. BMPs for this project shall include silt fencing and straw wattles.

ARTICLE 15. AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING REQUIREMENTS AND ACCOUNTABILITY.

The United States Bureau of Land Management (BLM) will fund this reclamation project through the American Recovery and Reinvestment Act of 2009 (ARRA). This requires that Contractor shall comply with the following requirements for ALL bid items identified on the Bid Form – Attachment 1.

A. REPORTING REQUIREMENTS

A.1. As a recipient of American Recovery and Reinvestment Act (Recovery Act) funds DEQ must report to the Office of Management and Budget (OMB) on the use of the funds by submitting a report to OMB no later than 10 days after the end of each calendar quarter. This report is posted to www.Recovery.gov. As part of this reporting requirement, Contractor, as a sub-recipient of ARRA funds, must have a DUN and Bradstreet Universal Number System (DUNS) number (www.dnb.com) and must maintain active and current profiles in the Central Contractor Registration (www.ccr.gov) for the duration of this CONTRACT. Contractor must comply with any guidance from the Office of Management and Budget (OMB) related to the reporting requirement of section 1512 of the Recovery Act issued by the OMB.

A.2. Contractor shall submit a written Monthly Report no later than the 5th day of each month that includes:
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A.2.1. an invoice requesting reimbursement of expenditures for the bid items identified on Bid Form – Attachment 1. Contractor shall determine and add to subcontractor contracts the contractor's cutoff date to ensure Contractor meets the State's established cutoff date. Invoice will detail cost reimbursement for Contractor's costs and any subcontract payments.

A.3. Contractor shall submit a written Quarterly Report no later than the 5th day of the month following the end of the quarter that includes:

- A.3.1. summarization of reimbursements and expenditures of funds for each bid item identified on Bid Form – Attachment 1 for the preceding quarter;
- A.3.2. the total number of jobs saved or created, based on employee's county of residence, during the preceding quarter;
- A.3.3. a brief status of the bid items identified on Bid Form – Attachment 1.

A.4. Contractor shall submit a written Annual Report that must be received by DEQ no later than December 31st of each year the CONTRACT is active, which must include the following:

- A.4.1. a short narrative of the original bid items identified on Bid Form – Attachment 1 (this would remain the same for each report submitted);
- A.4.2. progress for each of the bid items identified on Bid Form – Attachment 1 during the reporting period (activities carried out, accomplishments, highlights, problems, corrective actions, etc., must be discussed);
- A.4.3. status of expenditure of funds for each bid item identified on Bid Form – Attachment 1;
- A.4.4. planned activities for the next reporting period;
- A.4.5. the total number of jobs saved or created, based on employee's county of residence, over the course of the year.

A.5. Submit a final report within 45 days after the project is completed, that includes, at a minimum:

- A.5.1. a summary of activities performed;
- A.5.2. the overall project accomplishments;
- A.5.3. successes and failures, including significant problems or unique situations encountered, and corrective actions taken;
- A.5.4. extent to which the project goals and objectives were met;
- A.5.5. summarization of expenditures of project funds.
- A.5.6. the total number of jobs saved or created, based on employee's county of residence, over the course of the project.

B. ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS [2 CFR Part 176 et seq., 2 CFR Part 225 and 43 CFR Part 12]

B.1. In addition to the access to records provisions of 43 CFR Part 12, and in accordance with the provisions of Section 1515 of the Recovery Act, the Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this CONTRACT and current accounting for all funds received and expended pursuant to this CONTRACT in accordance with generally accepted accounting principles and to comply with the cost principles determining allowable costs. Contractor shall comply with all requirements in 43 CFR Part 12 and 2 CFR Part 176, relating to recordkeeping. The Contractor's accounting system must be able to allocate costs associated with the bid items identified on Bid Form – Attachment 1.

B.2. The State, the Legislative Auditor, the U.S. Department of Interior, Bureau of Land Management, the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this CONTRACT. Notwithstanding the provisions of the Termination Section of this CONTRACT may be terminated upon any refusal of the Contractor to allow access to records necessary to carry out the audit and analysis referred to above (ref. 18-1-118, MCA). Authorized representatives shall have access to records at any reasonable time for as long as the Contractor maintains the records. Audits conducted under this provision shall be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing company or agency.

B.3. Contractor agrees to disclose all information and reports resulting from access to the records maintained in paragraph B.1 of this clause to any of the agencies referred to in paragraph B.2.

B.4. The Contractor agrees to retain all financial records for three years as required by the United States government. Contractor agrees this period meets the requirements of state and federal law with respect to funding utilized. In addition, Contractor agrees to maintain any records relating to any litigation, claim, negotiation, audit, cost recovery, or other action

involving the records, until completion of the action and resolution of all issues, or until the end of the three-year period, whichever is longer. Contractor may not destroy any records without first offering the records to the State.

B.5. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this CONTRACT, Contractor agrees to correct the areas of non-compliance within six months after Contractor receives the audit report.

B.6. If Contractor receives a total of \$500,000 or more in federal funds from any and all sources of federal funding sources during any fiscal year during which this CONTRACT is performed, it must comply with the accounting and audit requirements of the most current version of the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations", and the provisions of OMB Circular A-87 "Cost Principles for State and Local Governments and Indian Tribal Governments" including the "Compliance Supplement for Single Audits," concerning the use of the funds provided under this CONTRACT.

B.7. Contractor must provide the State with a copy of its annual or biennial audit report covering the year in question within 30 days after the report's issuance. The audit report must include all of the following information:

- B.7.1. federal grantor/pass-through grantor program title;
- B.7.2. federal CFDA number;
- B.7.3. pass-through grantor's number or this CONTRACT number;
- B.7.4. program or award amount;
- B.7.5. cash accrued or deferred revenue at July 1 or the first day of Contractor's fiscal year;
- B.7.6. receipts or revenue recognized during the period;
- B.7.7. total disbursements/expenditures;
- B.7.8. cash accrued or deferred revenue at June 30 or the last day of Contractor's fiscal year; and
- B.7.9. an indication of the basic accounting used in determining the above information in a footnote to the schedule of federal financial awards.

B.8. If Contractor receives less than \$500,000 in total federal assistance during any fiscal year during which this CONTRACT is performed, and therefore does not need to submit an audit report to the State, Contractor must notify the State in writing within 30 days after the end of that year.

B.9. Contractor agrees to incorporate paragraphs B.1 through B.8 in any subcontract it awards in excess of \$5,000, at any tier, and in all change orders directly related to project performance.

B.10. All records maintained pursuant to this Section shall be available and present in proper form within 30 days of a written request made by the State.

C. DAVIS-BACON AND RELATED ACTS (Section 1606 of ARRA)

C.1. Federal wage rates and related regulations apply to this CONTRACT. All laborers and mechanics employed by Contractor or subcontractors in performance of this CONTRACT shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor of the United States Department of Labor (DOL). Tribal contracts with BIA for construction or conservation corps per the DOL letter of May 29, 2009 and the authorizing statutes of the conservation corps are excepted.

Contractor and subcontractors are required to obtain wage determinations from the DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to Recovery Act funds. Prevailing wage rates for Montana are available online at <http://www.access.gpo.gov/davisbacon/mt.html>, or from the DOL.

D. OMB GUIDANCE

D.1. This CONTRACT is subject to all applicable provisions of implementing guidance for the Recovery Act issued by the OMB, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-15) issued in April 03, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

E. DISPLAY OF ARRA LOGO

E.1. This project receives funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and Contractor must display the Recovery Act Logo in a manner that informs the public that the project is a Recovery Act investment. DEQ will ensure that Contractor receives the appropriate ARRA logo with detailed instructions on displaying the logo dependant upon which of the following logo is used:

E.2. The Recovery Act Primary Emblem will be supplied by DEQ and will be displayed in a prominent location at the work site.

E.3. The Recovery Act Horizontal Logo mark will be used for any press releases or other online or offline communications.

F. FEDERAL REQUIREMENTS

Contractor agrees to comply with all applicable provisions of 43 CFR. The following provisions are incorporated into this CONTRACT and shall be included by the Contractor in each subcontract or sub-tiered agreement under any subcontract it enters into in connection with this CONTRACT:

F.1. Buy American - Use Of American Iron, Steel, And Manufactured Goods. (Section 1605 of the ARRA, 2 CFR §176). None of the funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. This provision will be applied in a manner consistent with United States obligations under international agreements. Recipient agrees to comply with any further guidance from OMB applicable to this provision. This term and condition shall not apply in any case or category of cases in which the federal awarding Agency or a designated Agency official finds that (1) applying the term and condition (a) would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. If the grantee believes that this term and condition does not apply to a transaction financed with funds from this grant either (1) because a waiver is appropriate or (2) the requirement is inapplicable to the transaction, the grantee must submit, in writing, a detailed explanation for its position to BLM's project officer prior to entering into the transaction. The grantee may not proceed with the transaction until it receives written approval from the BLM's project officer or other designated official.

F.2. Limit on Funds. Contractor and any subcontract shall not use these funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

F.3. Trafficking Victim Protection Act of 2000. The Contractor and any subcontractor must not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of sub-award.

F.4. Protection Of Whistleblowers. In accordance with section 1553 of ARRA, Contractor and subcontractor employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

F.5. False Claim. Contractor and subcontractors agree to promptly refer to BLM's Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or sub-grants awarded by the grantee.

F.6. Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving (Executive Order 13513 of October 1, 2009). This executive order introduces a Federal Government wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment, driving company-owned or rented vehicles or Government Owned Vehicles, or while driving Privately Owned Vehicles when on official Government business or when performing any work for or on behalf of the Government.

F.7. Increasing Seat Belt Use. Recipients of grants/cooperative agreements and/or sub-awards are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other

appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

F.8. Supersession. This Section applies to the work eligible for BLM assistance to be performed under this CONTRACT, and the provisions within it supersede any conflicting provisions of this CONTRACT.

F.9. Drug Free Workplace (43 CFR 43). Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this CONTRACT that its employees and subcontractors will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this CONTRACT.

F.10. Lobbying (43 CFR 18). Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement. If any funds other than federal or state appropriated funds have been paid or will be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with this CONTRACT, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

F.11. Debarment, Suspension, Ineligibility and Voluntary Exclusion (per <https://www.epls.gov/>). Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have not within a 3-year period preceding this CONTRACT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2) above; and, (3) have not within a 3-year period preceding this CONTRACT, had one or more contracts terminated for cause or default by any federal or state agency.

F.12. Procurement of Recycled Good (42 U.S.C 6962). In accordance with Section 6002 of the Resource Conservation and Recovery Act, when the purchase of an item exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more, Contractor and subcontractors shall give preference to the purchase of specific products containing recycled materials.

F.13. Use of Recycled Paper (Executive Order 13423 (January 24, 2007)). Contractor certifies that recycled paper will be used for all reports, documents, or other submittals prepared by Contractor under the terms of this CONTRACT. This requirement does not apply to reports that are prepared on forms supplied by BLM.

F.14. Copyright And Right To Use (43 CFR Subpart C, Section 12.71 through 17.73). Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under this CONTRACT, is subject to BLM requirements and regulations pertaining to reporting and patent rights, and copyrights and rights in data. In any event, the State and BLM shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, any patented or copyrightable property developed under this CONTRACT.

F.15. Equipment, Supplies and Materials (43 CFR 12.72).

F.15.1. Any purchase of equipment required under this CONTRACT must be approved in advance and in writing by the State prior to purchase by Contractor.

F.15.2. The title of equipment, defined as having a purchase price of over \$5,000 and a useful life of more than one year, acquired under this CONTRACT, shall vest with the State. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.

F.15.3. At the conclusion of this CONTRACT, equipment shall be returned in good working condition to the State unless otherwise authorized in writing by the State and the Surplus Property Program of the Property and Supply Bureau of the General Services Division of the Montana Department of Administration. Supplies and materials with a value of less than \$5,000, purchased for and used in completing the terms of this CONTRACT shall be the property of Contractor.

F.16. Subcontracting with Disadvantaged Business Enterprises (DBE)

F.16.1. It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and

cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by recipients to utilize small businesses, minority owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

F.16.1.1. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

F.16.1.2. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

F.16.1.3. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority owned firms, and women's business enterprises.

F.16.1.4. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

F.16.1.5. Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.

G. CONTRACT TERMINATION

CONTRACT Contingent on Funding. This CONTRACT is automatically canceled if federal funds under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, are not appropriated or otherwise made available to support the CONTRACT's commencement or continuation of performance.

This CONTRACT is automatically cancelled if the Federal awarding agency unilaterally terminates the award due to a violation of the Trafficking Victim Protection Act of 2000.

H. STIPULATED PENALTIES

The following failures shall result in the assessment of the following stipulated penalties against Contractor:

For failure to maintain records as required in Section B, ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS, or require such record keeping of subcontractors, Contractor shall be assessed \$100/day from the date of original noncompliance. The State may waive such damages if Contractor is diligently pursuing correction, as documented by an independent or governmental auditor.

ARTICLE 14. EXECUTION. DEQ and Contractor through their authorized agents have executed this Contract on the dates set out below. The Effective Date of this Contract, shall be the latter of the two dates of signature

CONTRACTOR:

OWNER:

CONTRACTOR's NAME

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

VICKI WOODROW
Contracts Officer
Financial Services
Metcalf Building, Room 003
1520 East Sixth Avenue
Helena, Montana 59620-0901

Date

Taxpayer's I.D. No. ##

Approved for Legal Content:

Contractor's Registration Certificate No. ##

Thomas E. Root
DEQ Legal Counsel

Date